

ENRON POWER MARKETING, INC.

ORDER NO. EA-102

I. BACKGROUND

Exports of electric energy from the United States to a foreign country are regulated and require prior authorization under Section 202(e) of the Federal Power Act (FPA) (16 U.S.C. §824a(e)).

On October 4, 1994, ENRON Power Marketing, Inc. (ENRON) applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to transmit electric energy to Mexico. ENRON is a power marketer which buys and sells electric energy for its own account and it has been authorized by the Federal Energy Regulatory Commission (FERC) to make sales of electric power at wholesale in interstate commerce, at negotiated rates. ENRON does not own or control any electric generating or transmission facilities, nor does it have a franchised service area.

ENRON proposes to purchase surplus electric energy from electric utilities and Federal power marketing agencies and to export this energy on its own behalf to Mexico. The energy to be exported would be delivered to Mexico over the international electric transmission facilities owned and operated by the San Diego Gas & Electric Company (SDG&E), the El Paso Electric Company (EPE), the Central Power & Light Company (CPL), and the Comision Federal de Electricidad (CFE, the national electric utility of Mexico).

Notice of this application appeared in the Federal Register on November 2, 1994, (59 FR 54399) requesting that comments, protests, and petitions to intervene be submitted to the DOE by January 3, 1995. During the initial comment period, DOE received petitions to intervene from SDG&E, EPE, and Citizens Utilities Company (Citizens), and a comment from the North American Electric Reliability Council (NERC). At the request of two of the respondents, on January 9, 1995, DOE extended the comment period to February 3, 1995, for those who responded to the initial Notice, and, at the same time, granted ENRON until February 21, 1995, to respond to all comments, protests, and petitions to intervene filed in this proceeding. During the extended comment period, DOE received a comment from the Edison Electric Institute (EEI), which had not responded during the initial comment period. In addition, DOE received a comment from the Electric Reliability Council of Texas (ERCOT) on March 2, 1995, and from a private citizen, Mr. Buck Scott, on May 19, 1995. As no protests were filed in opposition to out of time comments, DOE has included them in the Docket and given them appropriate consideration in rendering this final decision.

II. SUMMARY OF COMMENTS

A. PETITIONS TO INTERVENE AND PROTESTS

1. El Paso Electric Company

On January 3, 1995, EPE filed a petition to intervene and protest in this proceeding. EPE claims that it has an interest in this proceeding because ENRON is proposing to use the EPE international transmission facilities to deliver exported energy to Mexico. EPE also protests that the ENRON application is deficient in that it lacks much of the information required by the DOE regulations governing electricity exports. On this basis EPE requests that the ENRON application be dismissed without prejudice.

In its discussion, EPE expresses concerns that the export of electric energy as proposed by ENRON could cause numerous reliability problems on both the EPE system and other third party systems. EPE develops the point that the ENRON application does not contain sufficient information to allow DOE or other potentially impacted third party transmission owners to assess the reliability impacts of the ENRON proposal. EPE claims that neither DOE nor the FERC has the authority to compel third party transmission access for export transactions. Also, EPE points out that it presently is in bankruptcy and that the use of EPE's international transmission facilities by ENRON may require approval of the Bankruptcy Court. Finally, EPE argues that, because ENRON is not a "transmitter", ENRON does not have standing to apply for an electricity export authorization under section 202(e) of the FPA.

On February 3, 1995, EPE filed supplemental comments in this proceeding. In this subsequent filing, EPE discusses the distinction between the somewhat broad public interest standard for authorizing imports of natural gas under the Natural Gas Act and the FPA's more specific statutory criteria governing electricity exports. EPE also points out that the present DOE program for granting blanket authorizations to import natural gas was implemented only after developing and publishing policy guidelines which addressed the public interest aspects of natural gas imports on a generic basis. EPE notes that DOE has conducted no similar generic studies for electricity exports and, therefore, a decision on exports could be based only on the information in each export proceeding. EPE argues that, since ENRON has failed to provide the specific information upon which DOE could make determination on the reliability impacts of its proposal, no evaluation of the effects of exports by ENRON is possible.

2. San Diego Gas & Electric

On January 3, 1995, SDG&E filed a petition to intervene and comment in this proceeding. Because ENRON is proposing to use three of the SDG&E international transmission lines to export to Mexico, SDG&E claims an interest in this proceeding. In its comments, SDG&E notes that ENRON fails to address the potential reliability impacts of its proposal and that its

application lacks sufficient information for either DOE or third party transmitters to assess the impact of the ENRON proposal on their systems. SDG&E also is concerned that the ENRON proposal could adversely impact the reliability of the SDG&E system by impeding SDG&E from meeting its obligations to CFE under the terms of an interconnection and exchange agreement and by causing certain control area problems during unexpected termination of an ENRON export to CFE. Finally, SDG&E claims that providing ENRON with transmission wheeling service under certain circumstances could adversely impact SDG&E's favorable tax status with respect to its outstanding Industrial Development Bonds.

3. Citizens Utilities

On January 3, 1995, Citizens filed a petition to intervene and protest in this proceeding. Citizens claims a right to intervene in this proceeding since it owns international transmission facilities, exports electric energy to Canada and Mexico, and is a competitor of ENRON for electric sales outside the United States. In its protest, Citizens claims that the DOE proposal¹ for accepting alternative information as a proxy for the information required by DOE regulations would cause DOE to repudiate its responsibilities under the FPA to explicitly address electric reliability and would give electricity marketers a competitive advantage over electric utilities in international electricity trade. Based on the points raised in protest, Citizens also requests that the ENRON application be rejected.

B. WRITTEN COMMENTS

Comments were received from EEI, NERC, ERCOT, and Mr. Buck Scott. Both NERC and ERCOT expressed the belief that electricity marketers should be required to abide by all established operating guidelines of NERC and the relevant reliability councils. In particular this would include the "Agreements in Principle on Scheduled Interchange" which establishes the obligations of control areas in scheduling interchange, as well as the obligations of purchasing-selling entities not performing control area functions but wishing to schedule interchange. EEI commented that the ENRON application should be denied because it did not contain the required information with which to assess the electric reliability impacts of its proposal. Mr. Buck Scott was supportive of the ENRON proposal in that it promoted cooperation among the U.S., Canada, and Mexico.

C. RESPONSE OF ENRON

On February 21, 1995, ENRON filed "Response to Comments" in this proceeding. In its submission, ENRON did not oppose the petitions to intervene filed by EPE, SDG&E, and Citizens. ENRON claims that the energy proposed for export is, by definition, surplus to the

¹ This proposal was contained in the Federal Register notice of November 2, 1994 (59 FR 54899), announcing receipt of ENRON's application for an electricity export authorization.

needs of U.S. consumers. Also, ENRON contends that section 202(e) of the FPA contains a presumption in favor of granting an export authorization.

In response to the technical reliability issues raised, ENRON claims that it intends to abide by established industry standards for transmitting electric energy and that it would address all system constraint issues and seek to avoid any negative reliability impacts or other operating problems unique to any system through the various agreements it may reach with transmitting systems.

ENRON further claims that its request for waiver of certain information requirements contained in the DOE regulations is warranted based on the changed circumstances surrounding the electric power industry since the DOE regulations were promulgated in 1980.

III. ANALYSIS

The issue of FERC jurisdiction and authority to order retail wheeling is not relevant or a part of this DOE proceeding. Also, the issue of DOE's authority to order transmission service is not relevant, because that is not being done in this order.

The authority requested of DOE by ENRON under section 202(e) of the FPA is a necessary condition for exporting. However, even with this grant of authority, ENRON must still make the necessary commercial arrangements and obtain any and all other regulatory approvals which may be required in order to effect the export, including obtaining all necessary transmission access required to wheel the exported energy to the foreign purchaser.

In granting ENRON authority to export, DOE is broadening the approach it always has taken. Most of the more traditional exporters have been electric utilities or power pools whose members consist primarily of electric utilities. DOE always has predicated its reliability analyses for these entities on the assumption that the exported energy would be supplied from system power; *i.e.*, provided from the exporting system's total supply resources, without associating the exported energy with any particular component of those resources. In fact, the total supply resources of either an individual utility or a power pool usually includes power purchased from other systems or regions. DOE believes it is neither possible nor appropriate to look behind an export and consider the reliability impacts of delivering power purchased from other sources onto the exporter's system.

Electricity marketers put together a power portfolio by purchasing various power products from a host of power suppliers. Because a marketer does not own any physical system to which these products may be delivered, DOE does not have the same starting point for its reliability analysis that it would in the case of the more traditional exporter. However, all exports by marketers do have identifiable delivery points: the transmission systems contiguous with the border. Once the exported energy arrives at one of these border systems, the impact on reliability

would be similar to that for exports which are supplied from the system power of that border system.

DOE already has granted export authorizations to all of the transmission systems contiguous with the U.S.-Mexican border. These authorizations contain limitations on the amount of power which could be exported over an international transmission line or grouping of lines. These export limits are based upon the reliability analyses performed in each of the export proceedings conducted by DOE.² This Order utilizes the results of those reliability analyses and requires ENRON to abide by the export limits contained in the export authorizations associated with the international transmission line(s) over which it proposes to export.

Commenters raised the issue that the ENRON application does not provide all of the information required by DOE's regulations and that this deficiency precludes a proper assessment of the reliability impacts of the export as required by the statutory requirements of the FPA.

DOE never has applied the information filing requirements contained in its regulations in a rigid manner. Each application for authorization to export has unique commercial and/or technical issues which make rigid filing requirements impractical. Also, the electric power industry is different today than it was when the regulations first were drafted at the onset of DOE, especially with the recent introduction of power marketers into the electricity industry. Consequently, DOE has always used a flexible approach in its review of the information necessary to evaluate the reliability impacts of a proposed export. Several recent export proceedings³ are examples where, in the absence of the more traditional technical information, DOE was satisfied that the export would not impair reliability. In each of these proceedings, DOE relied upon established industry guidelines, operating procedures and/or infrastructure as evidence that sufficient safeguards existed to maintain electric system reliability. DOE believes that the same situation exists in the case of ENRON's export application.

Furthermore, the U.S. electric power industry is vastly different today than it was in 1935. Integrated regional powerpools and multi-regional power exchanges were not envisioned at the time section 202(e) of the FPA was enacted. Similarly, the emergence of electricity marketers and brokers could not have been anticipated when the electricity export regulations were promulgated in 1980. Also the passage of the Energy Policy Act of 1992 and the signing of the North

² DOE has granted electricity export authorizations to SDG&E in Orders PP-68EA and PP-79EA, to EPE in Order EA-48-I, and to CPL in Order EA-94-A.

³ In each of the following Orders, DOE has authorized exports of electric energy to British Columbia Hydro, through the facilities of the Bonneville Power Administration (Presidential Permits PP-10, 36, and 46), without the benefit of empirical technical studies, but based on the infrastructure and existing agreements among potentially effected systems: Order EA-97, issued April 29, 1994, to Portland General Electric; Order EA-98, issued September 2, 1994, to 22 members of the Western Systems Power Pool; Order EA-100, issued April 19, 1994, to San Diego Gas & Electric; Order EA-101-A, issued October 23, 1995, to Washington Water Power.

American Free Trade Agreement in 1993 were both intended to promote increased competition in energy markets in general, and the electric power market in particular. The interpretation and implementation of the statutory and regulatory requirements governing exports of electricity, including the apparent favorable statutory presumption, should be consistent and account for these changes in the evolving electricity marketplace.

Present industry operating practices dictate that in order for electricity to be exported or, for that matter, moved anywhere in the U.S., two actions must be taken. First, the transaction must be scheduled with the appropriate control areas. Second, the exporter must obtain sufficient transmission access to wheel the electricity from the generating source to the border. The first requirement is almost a fait accompli. Since ENRON does not own or operate any generating or transmission facilities, it does not have the ability to move electric energy without the cooperation of the systems which do. With few exceptions, the generating sources from which ENRON would be purchasing electric energy are members of control areas and would have to schedule transactions with their respective control areas on behalf of ENRON. In deference to this point, the ordering language requires ENRON to abide by "...all reliability criteria, standards, and guides of the North American Electric Reliability Council and Regional Councils..." This includes NERC's recently approved "Agreements in Principle on Scheduled Interchange," which specify the requirements of control areas in scheduling interchange. The Agreements also establish the responsibilities of purchasing and selling entities, like ENRON, that do not perform control area functions, but wish to schedule interchange.

In order to obtain sufficient transmission access to wheel the electricity to the border, ENRON must come to terms with the affected transmission systems and obtain any necessary regulatory approvals. In considering ENRON's request, the transmission systems would have to assess the reliability impacts of moving the export through their systems and, presumably, would only agree to provide service under terms and conditions that would not cause reliability problems on their own systems.

IV. FINDING

Because ENRON has no native load obligations usually associated with a franchised service area, and because the electric power purchased by ENRON for export to Mexico would be surplus to the needs of those entities selling the power to ENRON, DOE finds that such exports by ENRON would not impair the sufficiency of electric supply within the United States. Furthermore, based on the above discussion and analysis, DOE finds that the proposed export would not impede or tend to impede the coordinated use of transmission facilities within the meaning of section 202(e) of the Federal Power Act.

The DOE also has assessed the potential environmental impacts associated with the authorizing of the proposed exports and has determined that this action is among those classes of actions not normally requiring preparation of an environmental assessment or an environmental impact statement, and, therefore, is eligible for categorical exclusion under Appendix B to

Subpart D, paragraph B4.2 of the revised DOE Regulations implementing the National Environmental Policy Act of 1969. Documentation of the use of this categorical exclusion has been placed in this Docket.

V. ORDER

Based on the above finding, it is hereby ordered that ENRON Power Marketing, Inc. (ENRON) is authorized to export electric energy to Mexico under the following terms and conditions:

(A) The electric energy exported by ENRON pursuant to this Order may be delivered to Mexico only over the following existing international transmission facilities⁴ for which assessments of the transmission limits for operation in the export mode have been made:

<u>Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u>	<u>Export Auth. Order No.</u>
SDG&E	Miguel, CA	230 kV	PP-68	PP-68EA
SDG&E	Imperial Valley, CA	230 kV	PP-79	PP-79EA
EPE	Diablo, NM	115 kV	PP-92	EA-48-I
EPE	Ascarate, TX	115 kV	PP-48	EA-48-I
CPL	Brownsville, TX	138 kV 69 kV	PP-94	EA-94-A
CFE	Eagle Pass, TX	138 kV	PP-50	EA-94-A
CFE	Laredo, TX	138 kV	PP-57	EA-94-A
	Falcon Dam, TX	138 kV	None	EA-94-A

(B) Exports authorized herein shall not cause a violation of the terms and conditions contained in existing electricity export authorizations associated with the international transmission facilities identified in paragraph A above. Specifically:

(1) Exports made by ENRON pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permits PP-68 and PP-79 to exceed an instantaneous transmission rate of 400 megawatts (MW) pursuant to the export limits contained in Orders PP-68EA and PP-79EA.

⁴ In its application, ENRON included SDG&E's 69-kV line in the San Ysidro area as a possible export point. Since the time of the ENRON application, SDG&E applied to DOE to terminate that international border crossing which was granted on February 1, 1996, by Order No. PP-49-1. Consequently, this Order does not include the San Ysidro 69-kV line as an allowable export point.

(2) Exports made by ENRON pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permits PP-48 and PP-92 to exceed an instantaneous transmission rate of 200 MW pursuant to export limits contained in Order EA-48-I.

(3) Exports made by ENRON pursuant to this Order shall not cause a violation of the export limits contained in Order EA-94-A. Specifically, exports by ENRON shall not cause the total exports on a combination of the 138 kV facilities at the Falcon Dam and the facilities authorized by Presidential Permits PP-50, PP-57, and PP-94 to exceed an instantaneous transmission rate of 600 MW during those times when the Central Power and Light (CPL) system is at a minimum load condition. During all other load conditions on the CPL system, exports by ENRON over the facilities identified in this subparagraph shall not cause the maximum rate of transmission to exceed:

(a) 300 MW for the 138 kV and 69 kV facilities authorized by Presidential Permit PP-94; or,

(b) 50 MW total for the 138 kV facilities at Falcon Dam and those authorized by Presidential Permits PP-50 and PP-57.

(C) Any change to the export limits contained in Orders PP-68EA, PP-79EA, EA-48-I, and EA-94-A resulting from an amendment of these Orders by DOE shall result in a concomitant change to the export limits contained in subparagraphs B(1), B(2), and B(3).

(D) ENRON may commence exports only over those international transmission lines identified in subparagraphs B(1), B(2), or B(3) for which ENRON provides DOE written evidence that sufficient transmission service has been obtained for delivery of the exported energy to the border.

(E) In scheduling the delivery of electricity exports to Mexico, ENRON shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council and Regional Councils, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(F) ENRON shall conduct all operations pursuant to the authorization hereby granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations, and orders adopted or issued by the DOE.

(G) The authorization herein granted may be modified from time to time or terminated by further order of the DOE, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permits referred to in Paragraph (A) above.

(H) This authorization shall be effective for a period of two years from the date of this Order. Within six months prior to the expiration of this authorization, ENRON may reapply for renewal of the authorization for a period of time longer than the original two-year period.

(I) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in such State or State regulatory commission.

(J) ENRON shall make and preserve full and complete records with respect to the electric energy exported to Mexico. ENRON shall furnish quarterly reports to the DOE, within 30 days following each calendar quarter, showing the gross amount of electricity delivered and the consideration received during each month of the previous quarter, and the maximum hourly rate of transmission.

(K) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would impair or tend to impair the reliability of the U.S. electric power supply system.

Issued in Washington, D.C., on February 6, 1996.

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Director
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